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762-334—65

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 805

RICHARD A. WOODRING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B. 1, pp. 12–16) is reported at 337 F. 2d 235. The memorandum decisions of the district court on motion to dismiss the indictment (Pet. App. B. 3, pp. 37–44; R. I, 18–26) and motions for a judgment of acquittal, a new trial and in arrest of judgment (Pet. App. B. 4, pp. 45–59; R. I, 71–85) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 16, 1964. A petition for rehearing was denied on November 4, 1964. Mr. Justice Douglas extended the time for filing a petition for a writ of

certiorari to and including January 2, 1965. The petition was filed on January 2, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the United States District Court for the District of Alaska had jurisdiction of a federal criminal offense committed nine days after Alaska was admitted to the Union as a State but before the District Court had become operational.

2. Whether the trial court committed error in its instructions to the jury.

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the District of Alaska of bank robbery in violation of 18 U.S.C. 2113(a) (R. I, 68; R. V., 665–666) and was sentenced to imprisonment for fifteen years (R. I, 86). The court of appeals affirmed. 337 F. 2d 235.

1. The crime was committed on January 12, 1959, nine days after Alaska became a State (Pet. 5). The Alaska Statehood Act had provided for continuation of the jurisdiction of the territorial district court for an "interim" of three years, unless sooner terminated by Executive Order (72 Stat. 339, 350). The President terminated this jurisdiction on February 20, 1960 (Executive Order No. 10867, 25 Fed. Reg. 1584, Pet. App. A. 3, pp. 10–11). On February 19, 1960 an indictment returned by a grand jury of the "interim" court against petitioner was pending. It was thereupon transferred to the United States District Court

where petitioner was tried and convicted of the January 12, 1959 bank robbery. The court of appeals reversed on the ground that Congress had failed to provide for transfer of the indictment from the "interim" court to the now functioning United States District Court. 304 F. 2d 308. On February 15, 1963 petitioner was re-indicted by a grand jury of the United States District Court (R. I, 1–2), thus setting in motion the case presently before this Court.

2. The evidence established that on January 12, 1959, at about 4:00 to 4:10 p.m. (R. III, 27, 64, 86), the Airport Road Branch of the Alaska National Bank of Fairbanks was robbed of $14,014.00 (R. III, 128) by an unidentified man wearing an olive drab army-type parka, a brown mouton trimmed cap, a plaid scarf across his face and gray gloves (R. III, 27–34, 45–48, 64–70, 85–91, 102–107). The robber carried a snub-nosed revolver (R. III, 48, 75, 91–92). The teller directly confronted by the man described him as approximately six feet, medium to heavy build, about 200 pounds, between 35 and 45, medium to bushy eyebrows with dark brown eyes (R. III, 39). This description fitted petitioner (R. IV, 366).

January 12, 1959 was petitioner's last day in Alaska. He left the home of a friend, Red Boucher, sometime between 3:00 and 4:00 p.m. (R. III, 204, 216, 224–227, 229, 245) and returned about five (R. III, 204) to leave a parachute bag, subsequently found to contain, among other things, a small revolver, a parka and a scarf (R. III, 208) identified at the trial as similar to the items in the possession of

the robber (R. III, 46–48, 72–75, 89–92, 212–214, 218–219). Petitioner also left some things in his wife's apartment before leaving Alaska at 8:30 P.M. (R. IV, 265–266). When the F.B.I. later searched the apartment, they found a hat, identified as similar to the robber's (R. III, 45, 72, 89, 299–301), and $300.00 cash for which Mrs. Woodring could not account (R. IV, 294–296).

Before leaving for Seattle that evening, petitioner, who had considerable debts before the robbery (R. III, 157–158, 196; R. IV, 252–253, 275–276), paid off several hundred dollars (R. III, 157–158; R. V, 252–253, 275–276) and also paid about $100.00 cash for the airline ticket to Seattle (R. III, 176–177). Three days later, on January 15, 1959, petitioner bought a Volkswagon automobile for $1,550.00 cash in Los Angeles (R. IV, 304–306).

On January 21, 1959, petitioner arrived at the home of his brother-in-law in Tulsa, Oklahoma (R. IV, 311). On the evening of January 22, 1959, in an interview with F.B.I. agents petitioner said, *inter alia,* that he had only $14.00 and that all his gear was in one room at his sister's home in Tulsa (R. IV, 364). Immediately following the interview, a search of petitioner's personal property was conducted with his consent (R. IV, 267–268). Later, after the F.B.I. obtained information indicating that petitioner had not exhibited all his personal property (R. IV, 373), another search was conducted. This time they found $500.00 in cash in a brief case brought into the room by petitioner (R. IV, 375–378), and a pair of gloves

(R. IV, 380), identified as similar to those worn by the robber (R. III, 74, 90–91). At this time, petitioner's brother-in-law showed the agents a shoebox (R. IV, 383), placed in the garage by petitioner (R. IV, 324), which was found to contain $3,221.00 in currency (R. IV, 432). Fingerprints of one of the tellers on duty at the bank on the day of the robbery were found on two of the bills (R. III, 101–102; R. IV, 456), and fingerprints of another teller who had worked in the bank the week preceding the robbery were found on one bill (R. III, 145; R. IV, 456).

ARGUMENT

1. There is no reason for this Court to review the holding of the court below that the United States District Court for the District of Alaska had jurisdiction to try petitioner for the federal offense which he committed on January 12, 1959, after Alaska became a State. As the court below pointed out, the statute making the acts which petitioner committed a federal crime, 18 U.S.C. 2113(a), had been passed long before January 12, 1959. Petitioner has been prosecuted for that federal crime in a duly constituted federal court staffed by a federal judge. There is no question here as to the jurisdiction and powers of the "interim court" (the continuation of the former territorial courts after statehood until the new courts created by the Statehood Act became functional).[1]

[1] Because there would be a lapse of time before the new state and federal courts would be functional, Section 18 of the Alaska Statehood Act provided for continuation of the jurisdiction of the territorial court for three years, unless sooner terminated

Petitioner's argument is that he cannot be tried and convicted of a federal crime in a federal court which was not in existence at the time of the offense. The short answer is that Congress intended that federal offenses committed after statehood should be punished and that such offenses not yet disposed of should be tried by the United States District Court for Alaska as soon as it was available.

Section 12 of the Alaska Statehood Act provided that Alaska "[e]ffective upon [its] * * * admission into the Union," would constitute one federal judicial district with one judge. Section 13 conferred jurisdiction on the new courts of causes of action and criminal offenses arising or committed prior to statehood which were not pending at statehood "as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses." Congress, which thus gave the new district court for Alaska jurisdiction of federal crimes committed but not prosecuted before statehood, obviously intended that the federal court would have jurisdiction over federal crimes committed after statehood. The existence of the "interim court" did not deprive the district court of that jurisdiction.

In any event, the District Court for the District of Alaska plainly "existed" as of January 3, 1959, the date of statehood. It was created by Section 12 of

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by Executive Order. This Court has said that the jurisdiction and powers of this "interim" court presents "perplexing questions, decisions of which should not be avoidably made." *Metlakatla Indian Community* v. *Egan*, 363 U.S. 555, 558–559.

the Statehood Act, effective on that date. Section 18, which continued the territorial court for the interim period, recognized this in providing that the "interim" court should continue for three years, "unless the President * * * shall sooner proclaim that the United States District Court for the District of Alaska, *established in accordance with the provisions of this Act* [Section 12], is prepared to assume the functions imposed upon it." [Emphasis supplied.] Similarly, the executive order terminating the jurisdiction of the "interim" court recognized that the United States District Court was established, not by the executive order, but by the Statehood Act itself. Executive Order No. 10867, February 20, 1960, 25 Fed. Reg. 1584. The fact that the district court was not staffed and operational on January 3, 1959 would not prevent its jurisdiction from attaching on that date. See *Benner* v. *Porter*, 9 How. 235, 244.

2. Petitioner's attacks on the trial court's instructions (Pet. 34–42) are without merit.

a. The court properly instructed the jury that the law generally makes no distinction between direct and circumstantial evidence, but "requires that, before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case" (R. I, 51). The court further charged that proof beyond a reasonable doubt is established "if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs" (R. I, 52–53) and that reasonable doubt exists when, after consideration of all the evidence, "the jurors do not feel convinced to

a moral certainty that a defendant is guilty of the charge" (R. I, 53). This combination of instructions was specifically upheld by this Court in *Holland* v. *United States*, 348 U.S. 121.

b. The fact of petitioner's previous conviction and the reversal thereof was explained to the jury at the outset before the voir dire examination of the jury without objection by the defendant (R. III, 11). During the course of the trial, the court, prosecution and defense referred at various times to the previous conviction (R. III, 39–40; R. IV, 349, 464–465; R. V, 524, 539–540, 555, 627). After a juror had contacted the judge's secretary about a newspaper article, referring to the prior trial, the judge gave a brief explanation of the basis of the reversal and told the jury that the prior trial had no bearing on this case before them (R. V, 555). The final instructions on the subject (R. I, 35), although objected to by defense counsel (R. V, 660), were drafted and submitted to the court jointly by the prosecuting attorney and petitioner's associate counsel (R. V, 660). It is thus evident that there was no effort on petitioner's part to keep from the jury the fact that he had been previously convicted. His objection seems to be that the court explained to the jury the basis for reversal. Since the fact of reversal was known, it was reasonable for the court to explain briefly to the jury the grounds therefor, so that there would not be any misunderstanding or confusion. The judge made it clear that the prior conviction and reversal had no bearing on this case and should be totally disregarded. The

jury is presumed to have followed the court's instruction. *Delli Paoli* v. *United States*, 352 U.S. 232.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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